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| RAIN AND HAIL INSURANCE SERVICE, INC., |) | AGBCA No. 97-182-F |
| (1996 Prevented Planting) |) | |
| |) | |
| Appellant |) | |
| |) | |
| Representing the Appellant: |) | |
| |) | |
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| |) | |
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| |) | |
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DECISION OF THE BOARD OF CONTRACT APPEALS

May 27, 2003

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.¹

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises under a 1996 Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC), U. S. Department of Agriculture (USDA), and Rain and Hail Insurance Service, Inc. (RHIS) of West Des Moines, Iowa (Appellant). The appeal concerns a dispute involving prevented planting for the 1996 reinsurance year (July 1, 1995, to June 30, 1996). The appeal, as initially filed, involved RHIS-s claimed reimbursement from FCIC for its prevented planting indemnity payments for fiscal year 1996, totaling \$12,810,014 on 5,006 claims and

¹ Judge Houry, who served on the original panel, retired.

premiums of \$5,111,175; and on its administrative processing, adjusting, investigating, training, servicing and operational costs and expenses incurred thereon.

In the appeal, Appellant charged that FCIC breached the SRA by changing the prevented planting provisions after the established change date for the contract, that FCIC's adjustment in premiums was inadequate compensation, that FCIC acted in bad faith in its calculation of the premiums and that changes made to the 1995 SRA which involved changes to prevented planting were equally applicable to the 1996 crop year SRA and therefore constituted a course of dealing. FCIC denied Appellant's claim by means of a final determination dated April 11, 1997. Appellant filed a timely appeal on July 11, 1997. The Board has jurisdiction under 7 CFR 24.4(b) and 400.169(d). Since its filing, this matter has been subject to extensive discovery, as well as subject to several motions (including one for summary judgment) and other pleadings dealing with a myriad of issues and procedural matters. On December 10, 2001, the Board issued a Ruling denying FCIC's Motion for Summary Judgment. Rain & Hail Insurance Service, Inc., 02-1 BCA & 31,790. Also, in late 2001, the Appellant filed suit for breach of the agreement (the same issue before the Board), with the U.S. District Court for the Southern District of Iowa, Southern Division. In response to a motion to dismiss filed by FCIC, the court, on May 1, 2002, stayed the proceeding in the District Court pending resolution of the administrative proceedings at the Board.

The Board set a trial date for December 2002. The hearing was postponed due to unanticipated conflicts and due to Appellant's notification that it intended to amend its complaint based on what Appellant categorized as added information developed in closing out discovery. In November 2002, Appellant filed a motion for leave to amend its complaint. The dollars claimed in the complaint changed in part from the sum sought in the initial complaint. The Government filed a resistance to the motion. In the interim, the Board set a new trial date for March 2003.

By letter of January 21, 2003, the Board addressed a number of concerns which had been raised by the Appellant's motion to amend and the Government's resistance. The Board stated, however, that it would allow Appellant to proceed with evidence to support the matters in the amended complaint in order to assure a complete record. The Board pointed out that the matters in the amended complaint appeared to involve issues that had been part of the appeal since its early stages. The Board advised the Government that it would be given additional time for discovery, but held firm to the March hearing date. In holding to that date the Board said that the Government would be given the opportunity for an additional proceeding to be held in April or May, to take final evidence on matters in the amended complaint.

The Government then responded with a motion to reconsider the determination of the Board to allow the Appellant to proceed with the amended complaint. The Board then held a telephone conference on January 28, 2003, at which time it reiterated to the parties that Appellant would be permitted to present evidence as to the amended complaint. The Board, however, also stated it would modify the procedures set out in the January 21, 2003, letter and allow the Government additional procedural rights including additional discovery and hearing time to be reconvened after

the March hearing. The Government had contended, and on reflection the Board agreed, that the Government would need more time for discovery than initially allowed.

During the conference, the Board and parties discussed the relief the Appellant was seeking in the amended complaint. Appellant clarified the scope of the recovery it was seeking and as a result of some of those clarifications the parties agreed that further discussions might be warranted in an attempt to reach a settlement. Thereafter, the parties advised the Board that they would engage in mediation, in an attempt to settle before the start of trial. The parties engaged in mediation and reached a settlement.

Under cover of a letter dated March 25, 2003, Appellant filed a Motion for Dismissal which called for the appeal to be dismissed with prejudice.

DECISION

The appeal is dismissed with prejudice.

HOWARD A. POLLACK
Administrative Judge

Concurring:

JOSEPH A. VERGILIO
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
May 27, 2003